United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 19, 2008

TO: Richard L. Ahearn, Regional Director

Region 19

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Pacific Northwest Regional Council of Carpenters

Case 19-CC-2042

560-7540-0100

This case was submitted for advice on whether the Union violated Section 8(b)(4)(ii)(B) when it posted a banner outside of a neutral department store. We agree with the Region that the charge should be dismissed, absent withdrawal, because the evidence does not show that the Union's banner linked the neutral to the labor dispute and was not otherwise misleading.

FACTS

Since the Fall of 2007, Charging Party, Mauer Construction, a nonunion general contractor, has worked on several remodeling projects at Macy's department stores in Eastern Washington and Idaho. In May 2008, the Union commenced a campaign to pressure Mauer to pay area standard wages and benefits. The Union sent a letter to Mauer stating that the Union intended to target the company beginning on May 15, 2008, as part of its area standards campaign. Mauer did not respond. The Union then sent a letter to a several area Macy's, including the downtown Spokane department store, stating that Macy's should refrain from using Mauer because it did not pay area standards.

Since May 15, 2008, and on various dates since then, the Union has engaged in bannering and handbilling outside the downtown Spokane Macy's department store. Mauer is not presently working or scheduled to work at that store. Two individuals, one male and one female, stand next to a stand-alone, stationary banner contained in a metal and plastic frame. The ten-foot long, five-feet high banner is located near the main entrance on a public sidewalk in front of the store windows but close to the curb. The banner states, "Macy's" in smaller print on the topic, and in larger print, "Low Wages = Poverty." The banner does not identify the Union, nor does it state "labor dispute" anywhere on the banner.

The two individuals standing next to the banner distribute handbills. The handbill states, in part, that certain area Macy's hired Maurer Construction, which pays 20% below area standards; urges customers to call Macy's and tell the managers to "quit discounting Spokane labor;" and states that the Union is not promoting any work stoppages or refusal to deliver goods or services.

The handbillers do not walk back and forth but may move toward people to offer them a handbill as they pass by. The handbillers are not confrontational and do not block ingress or egress. The only evidence of impact is a second-hand account that two groups of shoppers (the number is unclear) informed the Macy's manager that they would not shop at Macy's because they perceived the banner as implicating Macy's. The bannering appears to be ongoing.

ACTION

The Region should dismiss the charge, absent withdrawal, because the Union's banner is not misleading in that it does not link the neutral to the labor dispute or even refer to a labor dispute.

Under the General Counsel's previously articulated "bannering" theory, union bannering arguably violates Section 8(b)(4)(ii)(B) where the following four factors, viewed together, create an element of "confrontation" with the public or constitute a "signal" to a neutral's customers that they should not cross an invisible picket line: (1) the display of large banners; (2) the presence of individuals supporting the banners; (3) the close proximity of the banners to the targeted neutral employer; and (4) misleading language on the banners. To violate the Act, the fourth factor requires false and intentionally misleading banner language about the nature of the labor dispute. 2

¹ For a full explication of the General Counsel's bannering theories, see, e.g., <u>Carpenters Locals 184</u>, et al., <u>(Grayhawk Development)</u>, Cases 28-CC-971, et al., Advice Memorandum dated August 17, 2004.

² See, for example, Carpenters Local 1506 (Eliason & Knuth),
Cases 28-CC-939, 28-CP-260, Advice Memorandum dated
December 23, 2002; Carpenters Local 209 (Kings Hawaiian
Restaurant & Bakery), Case 31-CC-2103, Appeals Minute dated
September 25, 2002; Carpenters Local 1506 (Associated
General Carpenters, San Diego Chapter), Case 21-CC-3307,
Appeals Minute dated August 21, 2002. See also Sheet Metal
Workers Local 15 (Brandon Regional Hospital), Case 12-CC-

Here, we conclude that the fourth factor is not present because the banner was not misleading. The bannering language, "Macy's" and "Low Wages = Poverty" does not indicate that there is a labor dispute, one did the individuals supporting the banner identify themselves as union agents. Further, because the downtown Spokane Macy's is not presently undergoing any construction, the bannering would not trigger any customers or subcontractors to turn away based on a misconception that the Union has a primary labor dispute with Macy's. Accordingly, under the totality of the circumstances presented here, it would not effectuate the purposes of the Act to issue complaint.

In sum, the Region should dismiss the charge, absent withdrawal.

B.J.K.

1258, Advice Memorandum dated April 3, 2003 (misleading to post large inflated rat near hospital, creating false impression that neutral hospital is a "rat" employer).

³ See <u>Carpenters Local 1506 (Brinker Int'l Payroll Co.)</u>, Case 21-CC-3335, Advice Memorandum dated February 19, 2004 (finding "Don't Eat at Chili's" banner outside a Chili's restaurant was not unlawful where banner did not indicate labor dispute with Chili's or any other employer); <u>Southern California Conference of Carpenters (Eppink of California, Inc.)</u>, Case 21-CC-3310, Advice Memorandum dated April 18, 2003 (finding that "Shame on [Neutral Employer]" language alone, without reference to a labor dispute" was not intentionally misleading).

⁴ Although the leaflets distributed by Union agents made clear that they were directed at a labor dispute, the leaflets accurately identified the nature of the dispute and the identity of the primary. Accordingly, they provide no basis for attacking the banner.

⁵ We also note that this case arises in the Ninth Circuit, where the Court of Appeals has rejected the General Counsel's theories of violation in a union bannering case. Overstreet v. Carpenters Local 1506, 409 F.3d 1199 (9th Cir. 2005). Thus, even if the Union's activity was arguably unlawful, we would not be able to secure a Section 10(1) injunction against the bannering activity here.